

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Rivera, Theodore Serial No. 10/680,039 Filed: 10/07/2003 For: “SYSTEM AND METHOD FOR DEFECT PROJECTION IN TRANSACTION MANAGEMENT IN A TARGET COMPUTER ENVIRONMENT”	Group Art Unit: 2113 Examiner: MEHRMANESH, Elmira Customer Number: 68659
APPEAL BRIEF	

Commissioner for Patents
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October 22, 2007

Sir,

Pursuant to 37 C.F.R. § 41.37, Applicant submits its Appeal Brief according to the following Table of Contents:

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REAL PARTY IN INTEREST

The real party in interest in the present application and Appeal is: IBM Corporation, Armonk, New York 10504.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

STATUS OF CLAIMS

Claims **1-16** are pending.

Claims **1-16** stand rejected.

Claim **17** has been cancelled

Claims **1-16** are subject to the present appeal.

STATUS OF AMENDMENTS

No amendment has been filed since the Final Rejection of the last Office Action. An After-Final Response has been filed since the Final Rejection of the last Office Action.

SUMMARY OF CLAIMED SUBJECT MATTER

Specifically, the independent claims are summarized as follows:

Claim 1:

Claim 1 is directed to a method for assessing the probability of transaction success of a business transaction that will interact with one or more software applications in a target

computer environment (Specification ¶[0007]). A plurality of defect data items corresponding to a first software application are gathered (Specification ¶[0016], Fig. 2, items 22, 24, 28 and 30). For each item of the gathered defect data, an item-specific predicted business transaction failure rate based on the defect data items relative to a specific business transaction in a target computer environment is generated (Specification ¶[0017], Fig. 2, item 34). Each item-specific predicted business transaction failure rate is combined so as to generate a combined business transaction failure rate within the computer environment (Specification ¶[0018], Fig. 2, item 38). An output indicating the combined business transaction failure rate within the computer environment is generated. (Specification ¶[0018], Fig. 2, item 40).

Claim 9:

Claim 9 is directed to a system for assessing the probability of business transaction success that will interact with one or more software applications in a target computer environment (Specification ¶[0014], FIG. 1). The system includes a logic element configured to gather a plurality of defect data items corresponding to the first software application (Specification ¶[0014], Fig. 1, item 16). A logic element is configured to generate an item-specific predicted business transaction failure rate based on the defect data items relative to a specific business transaction in a target computer environment for each of item of the gathered defect data (Specification ¶[0014], Fig. 1, item 17) A logic element is configured to combine each item-specific predicted business transaction failure rate so as to generate a combined business transaction failure rate within the computer environment (Specification ¶[0014], Fig. 1, item 18). A circuit is configured to generate an output that indicates the combined business transaction failure rate within the computer environment (Specification ¶[0014], Fig. 1, item 14).

The dependant claims are not argued separately.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The following grounds of rejection are to be reviewed on appeal:

1. Claims 1-16 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,548,718, issued to Siegel et al. ("Siegel").

ARGUMENT

A. SUMMARY OF ARGUMENTS.

This section summarizes Applicant's arguments. A more detailed argument and citation to authority is found below.

Claim Rejection under 35 U.S.C. §102

1. **The final Office Action fails to demonstrate that each element of the claims rejected under § 102 are disclosed in the cited reference.**

The final Office Action rejects Claims 1-16 under 35 U.S.C. §102(b) as being anticipated by Siegel. However, Siegel et al. does not disclose the action of (or a circuit for) generating "an item-specific predicted business transaction failure rate based on the defect data items," nor does it disclose the action of (or a circuit for) "combining each item-specific predicted business transaction failure rate," as recited in independent Claims 1 and 9.

B. DETAILED ARGUMENTS AND CITATIONS TO AUTHORITY.

Regarding the Claim Rejection under 35 U.S.C. §102:

1. The final Office Action fails to demonstrate that each element of the claims rejected under § 102 are disclosed in the cited reference.

“[F]or anticipation under 35 U.S.C. 102, the reference must teach every aspect of the claimed invention either explicitly or impliedly. Any feature not directly taught must be inherently present.” MPEP 706.02. A rejection under 35 U.S.C. §102(b) requires that each element of the rejected claim be found in the cited reference.

The final Office Action rejects Claims 1-16 under 35 U.S.C. §102(b), as being anticipated by Siegel. However, the rejected independent claims include elements not disclosed in Siegel. Specifically, Siegel et al. does not disclose two elements recited in the rejected claims: (1) Siegel does not disclosed the action of (or a circuit for) generating “an item-specific predicted business transaction failure rate based on the defect data items,” and (2) Siegel does not disclose the action of (or a circuit for) “combining each item-specific predicted business transaction failure rate.” Appellant will address each of these limitations separately, as follows:

Regarding the limitations directed to generating “an item-specific predicted business transaction failure rate based on the defect data items”

The Final Office Action asserted that Siegel discloses “generating an item-specific predicted business transaction failure rate,” citing col. 5, lines 53-58 (Final Office Action, p. 3, ¶3). However, the cited passage from Siegel describes a system in which a mapping mechanism (item 302) receives “tester data from a tester spreadsheet 308, an operational profile from [a] user spreadsheet 310 (selected by [a] party that wishes to obtain [a] hits-to-failure metric), and failure data from [a] failure database.” (Siegel, col. 5, lines 53-58) There is no mention in this passage, or in any other part of Siegel, of anything that generates an item-specific business transaction failure rate. This passage discloses only a system in which a mapping mechanism

receives failure-related data for an area of a single application, not for a business transaction that can interact with several different applications, as recited in the independent claims.

Claims 1 and 9 both recite limitations directed to generating business transaction failure rates. Failure prediction of a business transaction, as opposed to failure prediction of a software application, predicts the stability of a business transaction in the target computer environment. Such a business transaction can interact with several different software applications in the target computer environment. (See, e.g., Specification, ¶¶[0005]-[0006]) Conversely, failure prediction of a software application merely predicts the stability of a single software application (e.g., a word processor program) in isolation from the business transaction context.

Siegel discloses only a system for determining the reliability of a single software product. (Siegel, col. 2, ll. 50-51) In Siegel, a mapping mechanism collects failure data corresponding to different “areas” in the software product. (Siegel, col. 5, ll. 52-64) Siegel defines an “area” as “a logical grouping of commands that the software product executes. For example, in a word processing program, all commands that manipulate a file, such as open, create, and close, may be considered to be one area.” (Siegel, col. 4, l. 67-col. 5, l. 4) Thus, it is clear that Siegel discloses a system that gathers failure data relating to operation *within a single software product*. There is no disclosure at all of a system that gathers failure data relating to business transactions across several different software products.

Claims 1 and 9, on the other hand, are directed to predicting failures of business transactions that interact with one or more software products. Siegel simply does not disclose such a system. Specifically, Siegel completely fails to disclose the limitation of “generating an item-specific predicted business transaction failure rate,” recited in Claim 1. Similarly, Siegel completely fails to disclose the limitation of “a logic element configured to generate an item-specific predicted business transaction failure rate” recited in Claim 9. For this reason, the §102 rejections of Claims 1 and 9 (and all claims depending therefrom) should not be sustained.

Regarding the limitations directed to “combining each item-specific predicted business transaction failure rate.”

The Final Office Action also asserted that Siegel discloses “combining each item-specific predicted transaction failure rate ... so as to generate a combined business transaction failure rate,” citing col. 4, lines 60-64, FIG. 5 and col. 5, line 52—col. 6, line 24 (Final Office Action, p. 3, ¶4). However, Siegel only describes a system that combines “tester data, failure data, and an operational profile.” It makes no mention of “combining ... item-specific predicted business transaction failure rate[s] so as to generate a combined business transaction failure rate,” as recited in the independent claims.

In cited portion of Siegel, a mapping mechanism “normalizes the mean hits-to-failure by dividing the mean hits-to-failure for each area of the software product...” Siegel is only determining a mean hits-to-failure for a software product (which, as discussed above, is a single software application, such as a word processor) by normalizing the hits-to-failure of each area (an area being a portion of an application, such as a font handler or a file manipulation module) that is part of a single software product.

Nowhere does Siegel disclose combining different item-specific failure rates to generate an overall business transaction failure rate. Such an overall business transaction failure rate would give a user an indication of how a business transaction would fare in a target computer environment that might include a plurality of different software applications.


Specifically, Siegel completely fails to disclose the limitation of “combining each item-specific predicted business transaction failure rate so as to generate a combined business transaction failure rate within the computer environment,” as recited in Claim 1. Similarly, Siegel completely fails to disclose the limitation of “a logic element configured to combine each item-specific predicted business transaction failure rate so as to generate a combined business transaction failure rate,” as recited in Claim 9. For this reason, the §102 rejections of Claims 1 and 9 (and all claims depending therefrom) should not be sustained.

CONCLUSION

For the reasons enumerated above, each of which is sufficient by itself, Applicant believes that the examination was in error and requests that all rejections be reversed and that all remaining claims be allowed.

No addition fees are believed due. However, the Commissioner is hereby authorized to charge any additional fees which may be required, including any necessary extensions of time, which are hereby requested, to Deposit Account No. 09-0461.

October 22, 2007
Date


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Claims Appendix

LISTING OF CLAIMS

This listing of claims will replace all prior versions, and listings, of claims in the application:

1. A method for assessing the probability of transaction success of a business transaction that will interact with one or more software applications in a target computer environment, the method comprising the steps of:
gathering a plurality of defect data items corresponding to the first software application; relative to a specific business transaction in a target computer environment and for each item of the gathered defect data, generating an item-specific predicted business transaction failure rate based on the defect data items;
combining each item-specific predicted business transaction failure rate so as to generate a combined business transaction failure rate within the computer environment; and
generating an output indicating the combined business transaction failure rate within the computer environment.
2. The method of claim 1, wherein the gathered defect data includes unit test data.
3. The method of claim 1, wherein the gathered defect data includes functional test data.
4. The method of claim 1, wherein the gathered defect data includes system test data.
5. The method of claim 1, wherein the gathered defect data includes translation test data.
6. The method of claim 1, wherein the gathered defect data includes performance test data.

7. The method of claim 1, wherein the gathered defect data includes integration test data.
8. The method of claim 1, further comprising the step of outputting the predicted transaction failure rate.
9. A system for assessing the probability of business transaction success that will interact with one or more software applications in a target computer environment, the system comprising:
 - a logic element configured to gather a plurality of defect data items corresponding to the first software application;
 - a logic element configured to generate an item-specific predicted business transaction failure rate based on the defect data items relative to a specific business transaction in a target computer environment for each of item of the gathered defect data;
 - a logic element configured to combine each item-specific predicted business transaction failure rate so as to generate a combined business transaction failure rate within the computer environment; and
 - a circuit configured to generate an output that indicates the combined business transaction failure rate within the computer environment.
10. The system of claim 9, wherein the gathered defect data includes unit test data.
11. The system of claim 9, wherein the gathered defect data includes functional test data.
12. The system of claim 9, wherein the gathered defect data includes system test data.
13. The system of claim 9, wherein the gathered defect data includes translation test data.
14. The system of claim 9, wherein the gathered defect data includes performance test data.

15. The system of claim 9, wherein the gathered defect data includes integration test data.
16. The system of claim 9, wherein the system further outputs the predicted business transaction failure rate.
17. (Cancelled)

Evidence Appendix

(None)

Related Proceedings Appendix

(None)